he may be charged with the fair value to him, or to some one in his position, on an accounting, and not the value in the open market. This rule is supported by *Flagg* v. *Stowe*, 85 Ill. 164; *Appeal of Barclay*, — Pa. —, 8 Atl. 169; *Weldon* v. *Beckel*, 10 Daly 472. The rule controlling the disposal of the partnership good will is not so well settled. The old rule in England seems to have been, "that when one partner retires from the firm and the business, the continuing partner will acquire the benefit arising out of the good will for nothing." LINDLEY, PARTNERSHIP, p. 444; *Hall* v. *Hall*, 20 Beav. 139; *Kennedy* v. *Lee*, 3 Mer. 440. And in this country it has been held, "where the partnership is for a certain term, the retiring partner cannot upon expiration of that term claim an interest in the good will of the firm." *Van Dyke* v. *Jackson*, 1 E. D. Smith (N. Y.) 419; see also *Appeal of Musselman*, 62 Pa. St. 81. The present case is supported by the apparent weight of authority in this country. Where one partner continues the business after the other's retirement from the firm and business, he must account to the latter for the reasonable value of the good will. *Dayton* v. *Wilkes*, 17 How. Prac. 510; *Sheppard* v. *Boggs*, 9 Neb. 257. The modern rule in case of the death of one of the partners, is that the good will does not pass to the survivor, but must be accounted for the same as other partnership property. *Fisk* v. *Fisk*, 77 N. Y. App. Div. 83; *Tennant* v. *Dunlap*, 97 Va. 234. An opposite view was announced in *Lobeck* v. *Lee-Clarke-Anderson Hdw. Co.*, 37 Neb. 158.

POST OFFICE—OFFENSES AGAINST POSTAL LAWS—USE OF MAILS TO DEFRAUD.—Defendants were officers of a manufacturing corporation owning a plant and actually engaged in manufacturing and selling the product. In order to sell an increased issue of the stock, defendants sent through the mails, letters to certain persons representing that the company desired to establish branch selling houses and to employ managers therefor at a stated salary. The letters also contained false representations as to the profits and dividends of the company and by their means certain of the persons addressed were induced to purchase stock of the company at par in the belief that they would be appointed branch managers. *Held*, that an indictment charging such facts and that the representations were knowingly false, did not charge the offense of using the mails to defraud, within the meaning of Rev. St. § 5480 (U. S. Comp. St. 1901, pp. 36, 96); it not being alleged that the stock was not worth the price paid for it. *Miller* v. *United States* (1909), — C. C. A., 7th Cir. —, 174 Fed. 35.

The element, the lack of which the court held defeated the application of the statute, was that the persons who bought the stock were not defrauded of any property which they then had but only of an expected employment and salary. The mere intention of the defendants not to meet the expectations of the persons responding to the letters in the matter of their employment as managers and of their salary and profits in consequence thereof, and of the earnings of the company and the dividends therefrom would not in the absence of intended loss to such persons in the investment made, constitute a crime under § 5480. The court distinguished the principal case from the cases cited by the Government, saying that in those cases an essential element

of the scheme was the intention to defraud the persons addressed, not out of expectations excited but out of the money or a portion thereof, contributed by them to the scheme. *Durland* v. *United States,* 161 U. S. 306, 16 Sup. Ct. 508, 40 L. Ed. 709; *Brooks* v. *United States,* 146 Fed. 223, 76 C. C. A. 581; *Horman* v. *United States,* 116 Fed. 350, 53 C. C. A. 570; *Weeber* v. *United States,* (C. C.) 62 Fed. 740; *Miller* v. *United States,* 133 Fed. 337, 66 C. C. A. 399. It would seem that willful misrepresentations or exaggeration with intent to induce those receiving the letters to invest their money or enter into a contract with the sender which they would not do but for the representations so made and reliance therein, resulting in a loss finally of profits they had a right to expect, ought to be punished under the statute equally with the taking or appropriation of money already in their hands and contributed to the scheme. The victims of the scheme are by the misrepresentations sent through the mail, deprived of the use of the money invested in an enterprise which they went into relying on the fraudulent misstatements.

VENDOR AND PURCHASER—EXECUTORY LAND CONTRACT—BUILDINGS DESTROYED.—The purchaser of land entered into possession under a contract providing for the payment of five thousand dollars and a bond for twenty thousand dollars to be thereafter given, secured by a mortgage on the land. The vendee had executed a mortgage to the vendor, and the vendor had executed a deed; but formal delivery was deferred until a map mentioned in the instrument could be filed with the deed, when delivery was to be effected by recording the instruments. After this, but before the map was prepared and the instruments recorded, a house on the land burned without the fault of either party. *Held,* that the loss fell on the vendee. *Sewell* v. *Underhill* (1910), — N. Y. —, 90 N. E. 430.

It is said that "the true test, in determining which party should bear the consequences of an accidental loss, pending a contract of sale is, which was the owner at the time." *Lombard* v. *Chicago Sinai Congregation,* 64 Ill. 477; *Gilbert* v. *Port,* 28 Ohio St. 276. Since equity regards that as done which ought to be done, it looks upon the purchaser under an absolute contract for the sale of land as the owner, and he, in the event of the destruction of the buildings by fire, before the performance of the contract, must bear any loss not occasioned by failure of duty on the part of the vendor. This rule was announced in the English case of *Paine* v. *Meller,* 6 Ves. Jr. 349, which case was followed by this court in deciding the principal case. This rule has been adopted by the courts of several states. *Thompson* v. *Norton et al.,* 14 Ind. 187; *Martin* v. *Carver,* — Ky. —, 1 S. W. 199; *Snyder* v. *Murdock,* 51 Mo. 175; *Marion* v. *Wolcott,* 68 N. J. Eq. 20, 59 Atl. 242; *Woodward* v. *McCollum,* 16 N. D. 42, 111 N. W. 623; *Reed* v. *Lukens,* 44 Pa. St. 200. And especially where the vendee has gone into possession. *Wetzler* v. *Duffy,* 78 Wis. 170, 47 N. W. 184, 12 L. R. A. 178. In New York it has been held that, when the buildings are destroyed before the time fixed by the contract for delivery of the deed and payment of the purchase money, the loss will not fall upon the vendee unless he has possession or the immediate right to possession. *Wicks* v. *Bowman,* 5 Daly 225. The doctrine is announced in several cases that the